ORISSA HIGH COURT : CUTTACK

AFR

W.P.(C) No.13452 of 2026

In the matter of an Application under Articles 226 and 227 of the Constitution of India, 1950

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M/s. J.S. Enterprisers
Represented by
Sri Jyoti Ranjan Mohapatra
Aged about 32 years
Legal heir of
Late Manoranjan Mohapatra
Adaspur-Niali Road, Adaspur
Cuttack, Odisha – 754 011
GSTIN: 21AGEPM8738K1Z5
By Profession: Business. ... Petitioner

-*VERSUS*-

1. The Superintendent
Central GST and Cx Division
Cuttack-I Cuttack
Plot No.5(P), Sector-6, CDA
Cuttack – 753 014.

2. Assistant Commissioner
Central GST and CX Division
Cuttack-I Cuttack
Plot No.5(P), Sector-6, CDA
Cuttack – 753 014. ... Opposite parties

Counsel appeared for the parties:

For the Petitioner	:	M/s. Prakash Kumar Jena, Siba Prasad Dalai, and Laxmi Narayan Sahoo, Advocates
For the Opposite parties	:	Mr. Mukesh Agarwal, Junior Standing Counsel (Goods and Services Tax, Central Excise and Customs Department)

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 25.06.2026 :: Date of Order : 22.07.2026

ORDER

Summary of Show Cause Notice in Form GST DRC-01, dated 26.09.2025 accompanied by Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and Order dated 29.12.2025 along with Order-in-Original dated 29.12.2025 (Annexure-2) issued by the Assistant Commissioner, GST & Central Excise, Cuttack-I Division, Cuttack, raising a demand under Section 73 in terms of the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017, pertaining to Financial Year 2021-22 (covering tax periods from 01.04.2021 to 31.03.2022) are assailed in the afore-noted writ petition, wherein the petitioner craves to invoke extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India with the prayer(s) to grant following relief(s):

"Under the facts and in the circumstances of the case, in the interest of justice and equity the petitioner prays the Hon'ble Court to kindly consider the aforementioned facts and be pleased to:

(I) admit the writ petition;

(II) issue writ of certiorari calling upon the opposite parties to send all paper and documents in issuing show cause notice dated 26.09.2025 in Annexure-1 and passing order dated 29.12.2025 in Annexure-2 so that the same can be examined by the Hon'ble Court.

(III) issue writ of mandamus directing the opposite parties to show cause why the show cause notice dated 26.09.2025 in Annexure-1 and passing order dated 29.12.2025 in Annexure-2 shall not be quashed and if the opposite parties fail to show cause or show insufficient cause, make the said rule absolute.

(IV) issue rule NISI giving effect to the above prayer(s);

(V) pass such other or further order(s) or such direction(s) as this Hon'ble Court may deem fit and appropriate on the facts and in the circumstances of the case, to meet the ends of justice; and

(VI) allow this writ petition.

And for this act of kindness the petitioner shall as in duty bound ever pray"

2. Sri Manoranjan Mohapatra (as proprietor) was carrying on business in the name and style "M/s. J.S. Enterprisers" being assigned with GSTIN: 21AGEPM8738K1Z5 and stated to have issued e-invoices as required under Notification No.88/2020-Central Tax, dated 10.11.2020 on the transactions of supply and received tax e-invoices from companies like Ultratech Cement Ltd., JK Lakshmi Cement Ltd., Bhartia Distributors Pvt. Ltd. and MSP Sponge Iron Ltd. *etc.* as per Section 31 of the Central Goods and Services Tax Act, 2017/the Odisha Goods and Services Tax Act, 2017 (collectively be referred to as "GST Act") read with Rule 48(5) of the Central Goods and Services Tax Rules, 2017/the Odisha Goods and Services Tax Rules, 2017 (collectively be referred to as "GST Rules"). As per records maintained by him, regular returns as required under the statute were being filed indicating claim of and availment of input tax credit and disclosing discharge of tax liability. During the Financial Year 2021-22 total tax liability discharged was shown to be at Rs.2,97,20,836.79.

2.1. On the death of proprietor of M/s. J.S. Enterprisers, namely Sri Manoranjan Mohapatra on 24.11.2022, the legal heirs decided to continue with the business in the same name and style till 31.03.2023. Thereafter it was decided to run the business in the name and style "M/S. J.S. ENTERPRISERS" by constituting a partnership firm comprising Sri Chitta Ranjan Mohapatra, Sri Rashmi Ranjan Mohapatra and Sri Jyoti Ranjan Mohapatra as partners. Accordingly application dated 25.01.2023 was made for issue of new registration certificate in the name "M/s. J.S. Enterprisers", with the status of partnership firm. A registration certificate assigning GSTIN: 21ABWFM0651L1Z0 was issued on 03.02.2023 giving effect from 25.01.2023 in the Legal name and Trade name as "M/S. J.S. ENTERPRISERS" with status partnership firm.

2.2. It was also decided by the legal heirs of Late Manoranjan Mohapatra [1] having Legal name and Trade name "Manoranjan Mohapatra" assigned with GSTIN: 21AGEPM8738K1Z5 to continue with the proprietorship business to be run by one of the legal heirs, namely Jyoti Ranjan Mohapatra. For the said purpose application for non-core amendment being made, it was approved by the Goods and Services Tax Organisation on 20.06.2023. The petitioner filed returns in Form GSTR-3B for the tax periods April, May and June of 2023 during the Financial Year 2023-24 disclosing

[1] Copy of Legal Heir Certificate enclosed as Annexure-4A with the writ petition, discloses the following are the heirs of Late Manoranjan Mohapatra:
Basanti Mohapatra (wife); Salina Sahoo (daughter); Rasmiranjan Mohapatra (son); Jyotiranjan Mohapatra (son).

"Manoranjan Mohapatra" as Legal Name and "M/s. J.S. ENTERPRISERS" as Trade Name using GSTIN: 21AGEPM8738K1Z5.

2.3. Upon scrutiny of returns under Section 61 of the GST Act, 2017, the Superintendent, opposite party No.1, issued notice in Form GST ASMT-10 dated 28.05.2025 read with Rule 99 of the GST Rules in the name of deceased "Manoranjan Mohapatra" who died on 24.11.2022 and said fact was within the knowledge of the Goods and Services Tax Organisation being intimated on 25.01.2023. No reply could be filed in response to such notice by the legal heir/petitioner as the notice in Form GST ASMT-10 in the common portal was issued in the name of the deceased-Late Manoranjan Mohapatra.

2.4. In consequence thereof, Demand-*cum*-Show Cause Notice under Section 73 of the GST Act read with Rule 100(2) and Rule 142(1)(a) *vide* Ref. No. ZD210925001298J dated 01.09.2025 was issued by the Superintendent, opposite party No.1. This apart, another Show Cause Notice was issued by the Assistant Commissioner, opposite party No.2, *vide* Ref. No.ZD210925039360M dated 26.09.2025 in Form GST DRC-01 in the common portal in the name of deceased "Manoranjan Mohapatra" despite the fact that the Goods and Services Tax Organisation has carried out amendment of the non-core field in registration particulars on 20.06.2023 indicating Sri Jyoti Ranjan Mohapatra as legal heir of Late Manoranjan Mohapatra.

2.5. The petitioner, legal heir of the deceased Late Manoranjan Mohapatra, describing as "Jyoti Mohapatra", indicating the status "legal heir" filed reply in Form GST DRC-06 to Show Cause Notice in Form GST DRC-01, dated 01.09.2025 *vide* Ref. No. ZD210925001298J on 30.09.2025. Considering said reply the opposite party No.1 dropped the allegation(s) by passing Order-in-Original No. SUPDT/CTC-III/GST/135/2025, dated 29.12.2025.

2.6. On the other hand, so far as the proceeding initiated by the Assistant Commissioner of GST and Central Excise, Cuttack-I Division, Cuttack by issue of Show Cause Notice in Form GST DRC-06 (Ref. No.ZD210925039360M), dated 26.09.2025 (Annexure-1) under Section 73 of the GST Act indicating "NA" against serial No.2 (Date of personal hearing), serial No.3 (Time of personal hearing) and serial No.4 (Venue where personal hearing will be held), notwithstanding explanation offered by Jyoti Ranjan Mohapatra (petitioner), describing as the legal heir of Late Manoranjan Mohapatra, the proprietor of "M/s. J.S. Enterprisers" with GSTIN: 21AGEPM8738K1Z5, *vide* Reply to Show Cause Notice (ARN: SD211025020736X) placing “tick mark” against serial No.7 exercising option for personal hearing, said Authority proceeded with the matter.

2.7. In view of voluminous documents relating to transactions effected during Financial Year 2021-22 were to be uploaded to substantiate the claim of M/s. J.S. Enterprisers proprietor Late Manoranjan Mohapatra, personal hearing was opted in the reply. Despite such information available with the Assistant Commissioner, GST and Central Excise, he concluded the proceeding, without due and reasonable adherence to the principles of natural justice. The proceeding thus concluded under Section 73 of the GST Act, said Authority passed an Order-in-Original bearing No.AC/CTC-I/GST-69/2025, dated 29.12.2025 (Annexure-2) in the name of “Manoranjan Mohapatra”, who is dead since 24.11.2022.

2.8. Alleging that the proceeding initiated by issue of Show Cause Notice and passing the Order-in-Original under Section 73 of the GST Act in furtherance thereto by the Assistant Commissioner, GST and Central Excise, Cuttack-I Division, Cuttack (opposite party No.2) are void *ab initio* and *non est* in the eye of law. As such they being untenable in law, the instant writ application has been filed with prayer to quash not only the Show Cause

Notice(s) (Annexure-1) and the Order-in-Original (Annexure-2).

3. The short issue involved in this matter is whether the Assistant Commissioner of Central Goods and Services Tax and Central Excise, Cuttack-I Division, Cuttack is competent to initiate proceeding under Section 73 by issue of Show Cause Notice in Form GST DRC-01 dated 26.09.2025 accompanied by Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and complete said proceeding by passing Order-in-Original dated 29.12.2025 (Annexure-2), thereby raising a demand against a dead person (by name, *i.e.,* Manoranjan Mohapatra), who was running the proprietorship concern, *viz.,* M/s. J.S. Enterprisers, bearing GSTIN: 21AGEPM8738K1Z5.

3.1. At the stage of "Fresh Admission", on 25.06.2026 Sri Prakash Kumar Jena and Sri Siba Prasad Dalai, learned Advocates and Sri Mukesh Agarwal, learned Junior Standing Counsel for the Goods and Services Tax Organisation advanced arguments.

3.2. Having heard counsel for respective parties, the matter stood reserved for preparing and delivery of judgment.

4. Sri Prakash Kumar Jena, learned Advocate contended that the Show Cause Notice (Annexure-1) and the Order-in-Original (Annexure-2) are *non est* in the eye of law and they are rendered nullity inasmuch as the same cannot subsist as against a dead person. Arduously contending that in absence of any statutory provision to initiate and continue with the proceeding against a non-existing person, the proceeding must abate.

4.1. The learned counsel submitted that upon intimation of the fact of death of proprietor of M/s. J.S. Enterprisers, namely Manoranjan Mohapatra, on 24.11.2022, a partnership firm constituted with partners, namely Jyoti Ranjan Mohapatra, Chitta Ranjan Mohapatra and Rasmi Ranjan Mahapatra, was assigned with GSTIN: 21ABWFM0651L1Z0 *vide* Registration Certificate in Form GST REG-06 issued by the Superintendent, Cuttack-II Circle being approved by the Goods and Services Tax Network on 03.02.2023 (Annexure-5A) to carry on business in the name and style "M/s. J.S. Enterprisers". Further, on consideration of non-core amendment application, GSTIN: 21AGEPM8738K1Z5 (which was earlier allotted in the name and style "M/s. J.S. Enterprisers") has been allowed to continue with Legal Name and Trade Name: "Manoranjan Mohapatra" with approval of the Authority concerned on 20.06.2023 (Annexure-6). What is essentially sought to be projected by the learned counsel that the Show Cause Notice in GST DRC-01 dated 26.09.2025 along with Demand-*cum*-Show Cause Notice dated 25.09.2025 in the Legal Name:

"Manoranjan Mohapatra" and Trade Name: "M/s. J.S. Enterprisers" and the Order-in-Original dated 29.12.2025 in the name: "M/s. J.S. Enterprisers, Proprietor: Manoranjan Mohapatra" raising demand with respect to Financial Year 2021-22 is liable to be quashed as no notice and demand can be sustained against a dead person.

5. Sri Mukesh Agarwal, learned Junior Standing Counsel representing the opposite parties *per contra* drawing attention of this Court to the provisions of Section 93 of the GST Act, vehemently opposed the submissions made by Sri Prakash Kumar Jena, learned Advocate and he would urge that since Show Cause Notice in GST DRC-01 dated 26.09.2025 along with Demand-*cum*-Show Cause Notice dated 25.09.2025 and the Order-in-Original dated 29.12.2025 were passed by statutory authority, no infirmity can be imputed against the Assistant Commissioner, GST and Central Excise, Cuttack-I Division, Cuttack.

5.1. Expanding his argument further it is urged that since the petitioner has been continuing with the business using the same registration number being GSTIN: 21AGEPM8738K1Z5, as he is one of the legal heirs, it cannot be said that the demand raised upon participation of the petitioner is *non est* and void. Had the petitioner been sanguine about his rights and liabilities under the GST Act and Rules framed thereunder, it was open for him to contest the Show Cause Notice/Demand-*cum*-Show Cause Notice along with the Order-in-Original before the competent Authority by taking recourse to alternative forum available under the said statute.

6. The factual matrix and the arguments advanced by the counsel for the respective parties leaves sole question for consideration is whether the Assistant Commissioner, GST and Central Excise, Cuttack-I Division, Cuttack was competent to initiate proceeding under Section 73 of GST Act, 2017 by issue of the Show Cause Notice and Demand-*cum*-Show Cause Notice (Annexure-1) and consequent thereto pass Order-in-Original (Annexure-2) with respect to the transactions pertaining to Financial Year 2021-22 treating "M/s. J.S. Enterprisers, Proprietor Manoranjan Mohapatra" as assessee after death of the proprietor?

7. The documents forming part of the writ petition would reveal that Annual Return in Form GSTR-9 (Annexure-3B) for the Financial Year 2021-22 was filed on 31.12.2022 against GSTIN: 21AGEPM8738K1Z5 disclosing Trade Name: "M/s. J.S. Enterprisers" and Legal Name of the registered person: "Manoranjan Mohapatra". After death of Manoranjan Mohapatra proprietor of M/s. J.S. Enterprisers on 24.11.2022, Registration Certificate in Form GST REG-06 (Annexure-5A) was issued on 03.02.2023 depicting "M/s. J.S. Enterprisers", a partnership firm assigned with GSTIN: 21ABWFM0651L1Z0 (Period of validity is shown to have been effective from 25.01.2023).

7.1. It is discernible from record that considering the application for non-core amendment, on 20.06.2023 the system approved continuance of business assigned with GSTIN: 21AGEPM8738K1Z5 in the Legal Name and Trade Name (both) "Manoranjana Mohapatra" (Annexure-6). Against said GSTIN, while returns in Form GSTR-3B were submitted for the tax periods April, 2023 and May, 2023, return for the tax period June, 2023 was filed disclosing "Jyoti Mohapatra" as legal heir of Legal Name: Manoranjan Mohapatra and Trade Name: M/s. J.S. Enterprisers. It is further noticed that in the explanation to show cause notice dated 24.09.2025 filed before the Assistant Commissioner, GST & Central Excise, Cuttack-III Range, Cuttack (Annexure-8 series) it has clearly been indicated as follows:

*"Respectfully, I Mr. Jyoti Ranjan Mohapatra, C/o Late Manoranjan Mohapatra, legal heir of M/s. J.S. Enterprisers beg to state that we attach herewith e-invoice, purchase bill, and explanation (page 1 and 2) letter about all query mentioned in the above notice. All deposited all such purchase bill and purchase register at GST Department. ***"*

7.2. Application for rectification of orders dated 16.03.2026 clearly speaks out that Sri Jyoti Ranjan Mohapatra, legal heir of proprietor of M/s. J.S. Enterprisers, prayed for rectification of Order dated 29.12.2025 (Annexure-9).

7.3. Minute scrutiny of above documents evinces that the information regarding death of Manoranjan Mohapatra was within the knowledge of the Authority concerned. Notwithstanding the same, Show Cause Notices at Annexure-1 were issued in the name of "Manoranjan Mohapatra" describing him as proprietor of M/s. J.S. Enterprisers on 25/26.09.2025. Furthermore, the Order-in-Original dated 29.12.2025 (Annexure-2) reflects as follows:

> *"2.0 M/s. J.S. Enterprisers, Proprietor: Manoranjan Mohapatra located at Adaspur, Niali Road, Cuttack, Odisha – 754 011 ... holder of GSTIN No.21AGEPM8738k1Z5 ..."*

7.4. It is manifest from the above discussion that even though the GST Organisation was fully aware that the proprietor of M/s. J.S. Enterprisers was dead, the authority concerned issued not only show cause notice but also passed Order-in-Original against a dead person.

7.5. It may be worthwhile to have reference to following observations made in *Savita Kapila Vrs. CIT, (2020) 426 ITR 502 = 2020 SCC OnLine Del 2540* as referred to in

Sripathi Subbaraya Manohara Vrs. CIT, (2021) 436 ITR 469 = 2021 SCC OnLine Del 3701:

"9. The objections raised by the learned counsel for the respondents on the maintainability of the present petition, as also on merit, are no longer res integra, having been elaborately discussed and rejected by this court in its judgment in Savita Kapila (supra) authored by one of us (Hon'ble Mr. Justice Manmohan). Therefore, instead of revisiting the issues raised, we would merely reproduce the findings given by this court in its referred judgment (page 509 of 426 ITR) :

'An alternative statutory remedy does not operate as a bar to maintainability of a writ petition where the order or notice or proceedings are wholly without jurisdiction. If the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed would not render the challenge to jurisdiction infructuous. ...

Further, the fact that an assessment order has been passed and it is open to challenge by way of an appeal, does not denude the petitioner of its right to challenge the notice for assessment if it is without jurisdiction. If the assumption of jurisdiction is wrong, the assessment order passed subsequently would have no legs to stand. ***If the notice goes, so does the order of assessment. It is trite law that if the Assessing Officer had no jurisdiction to initiate assessment proceeding, the mere fact that subsequent orders have been passed***

would not render the challenge to jurisdiction infructuous. *...*

The sine qua non for acquiring jurisdiction to reopen an assessment is that notice under section 148 should be issued to a correct person and not to a dead person. Consequently, the jurisdictional requirement under Section 148 of the Act, 1961 of service of notice was not fulfilled in the present instance. ...

In the opinion of this court the issuance of a notice under Section 148 of the Act is the foundation for reopening of an assessment. ***Consequently, the sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned notice being valid in law.*** *[See Sumit Balkrishna Gupta Vrs. Asst. CIT, (2019) 414 ITR 292 (Bom) = (2019) 2 TMI 1209 (Bombay High Court)]. ...*

Consequently, in view of the above, a reopening notice under section 148 of the Act, 1961 issued in the name of a deceased-assessee is null and void. ...

As in the present case proceedings were not initiated/pending against the assessee when he was alive and after his death the legal representative did not step into the shoes of the deceased-assessee, Section 159 of the Act, 1961 does not apply to the present case. ***Section 159 of the Act, 1961 applies to a situation where***

proceedings are initiated/pending against the assessee when he is alive and after his death the legal representative steps into the shoes of the deceased-assessee. *Since that is not the present factual scenario, Section 159 of the Act, 1961 does not apply to the present case. ...*

There is no statutory requirement imposing an obligation upon legal heirs to intimate the death of the assessee. This court is of the view that in the absence of a statutory provision it is difficult to cast a duty upon the legal representatives to intimate the factum of death of an assessee to the Income-tax Department. After all, there may be cases where the legal representatives are estranged from the deceased-assessee or the deceased-assessee may have bequeathed his entire wealth to a charity. Consequently, whether the permanent account number (PAN) record was updated or not or whether the Department was made aware by the legal representatives or not is irrelevant. In Alamelu Veerappan Vrs. ITO, (2018) 12 ITR-OL 95 (Mad) it has been held 'nothing has been placed before this court by the Revenue to show that there is a statutory obligation on the part of the legal representatives of the deceased-assessee to immediately intimate the death of the assessee or take steps to cancel the permanent account number (PAN) registration'. ...

Consequently, the legal heirs are under no statutory obligation to intimate the death of the assessee to the Revenue. Section 292B of the Act, 1961 has been held to be inapplicable, vis-a-vis, notice issued to a dead person in Rajender Kumar Sehgal Vrs. ITO, *(2019) 414 ITR 286 (Delhi), Chandreshbhai Jayantibhai Patel Vrs. ITO (2019) 413 ITR 276 (Guj) and Alamelu Veerappan (supra).*

This court is of the opinion that issuance of notice upon a dead person and non-service of notice does not come under the ambit of mistake, defect or omission. Consequently, Section 292B of the Act, 1961 does not apply to the present case. ...

In Rajender Kumar Sehgal (supra) a Co-ordinate Bench of this court has held that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. ...

This court is also of the view that Section 292BB of the Act, 1961 is applicable to an assessee and not to a legal representative. Further, in the present case one of the legal heirs of the deceased-assessee, i.e., the petitioner, had neither co-operated in the assessment proceedings nor filed return or waived the requirement of Section 148 of the Act, 1961 or submitted to jurisdiction of the Assessing Officer. She had merely uploaded the death certificate of the deceased-assessee. ...

*Consequently, the applicability of Section 292BB of the Act, 1961 has been held to be attracted to an assessee and not to legal representatives.' ***"*

7.6. Sri Mukesh Agarwal, learned Junior Standing Counsel drew attention of this Court to the following sentences recorded in the Order-in-Original:

"Shri Sruti Ranjan Swain, Accountant and authorised representative of M/s. J.S. Enterprisers (noticee) attended

*the personal hearing in virtual mode on dated 17.11.2025. ***"*

Therefore, he submitted that having participated in the proceeding, the petitioner cannot avoid the liability as determined and contest the demand raised in the Order-in-Original and contend that the demand gets wiped out despite the fact that the same is issued in the name of the deceased proprietor. This Court cannot accede to such submission of the learned Junior Standing Counsel inasmuch as the petitioner in the present case has intimated the fact of death of the proprietor of M/s. J.S. Enterprisers and subsequent events, like issue of Registration Certificate in favour of partnership firm namely M/s. J.S. Enterprisers and non-core amendment being carried out in the Legal Name/Trade Name of Manoranjan Mohapatra, did occur prior to issue of Show Cause Notice *vide* Annexure-1. Being conscious, the Assistant Commissioner could not have proceeded with the adjudication process against the dead person.

7.7. The aforesaid stance of the learned Junior Standing Counsel is repelled as the same has no legal foundation. It may be noteworthy that in the Application for rectification of orders (Annexure-9) it has been clearly mentioned by the petitioner that "At the time of reply of notice it is not possible to upload each and every bill due to voluminous data and virtual meeting. Due to default of GST Department IRN are not shown."

7.8. To buttress his argument that against a dead person neither Show Cause Notice can be issued nor can the Order-in-Original be passed and served, Sri Prakash Kumar Jena, learned counsel for the petitioner relied on the following Judgments:

i. *Kanakalata Senapati Vrs. Assistant Commissioner of GST and Central Excise, W.P.(C) No.29819 of 2025, vide Judgment dated 15.01.2026 of this Court*;

ii. *Devendra Kumar Singh Vrs. State of U.P., Writ Tax No.2109 of 2025, decided on 08.05.2025* reported at *2025 (99) GSTL 60 (All) = 2025 SCC OnLine All 8284*[2]:

> *"6. **Undisputed facts are that the show cause notice, reminders and determination of tax have been made after the death of the proprietor of the firm.** Provisions of Section 93 of the Act, insofar as relevant, reads as under:*

[2] Similar are the cases of *Rajvanti Devi Vrs. State of U.P., Writ Tax No.142 of 2026, decided on 29.01.2026* reported at *2026 SCC OnLine All 15633 : 2026 (107) GSTL 23 (All-Lucknow Bench); Samban Pharma Vrs. Deputy Commissioner, Writ Tax No.2256 of 2025, decided on 15.05.2025* reported at *2025 (99) GSTL 311 (All); Mudit Gupta Vrs. State of U.P., Writ Tax No.4277 of 2025, decided on 01.09.2025* reported at *2025 (102) GSTL 105 (All).*

'93. Special provisions regarding liability to pay tax, interest or penalty in certain cases:

(1) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 (31 of 2016), where a person, liable to pay tax, interest or penalty under this Act, dies, then—

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act; and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his *death but has remained unpaid or is determined after his death.'*

7. *A perusal of the above provision would reveal that the same only deals with the liability to pay tax, interest or penalty in a case where the business is continued after the death, by the legal representative or where the business is discontinued, however, the provision does not deal with the fact as to whether the determination at all can take place against a deceased person and the said provision cannot and does not authorise the determination to be made against a dead person and recovery thereof from the legal representative.*

8. *Once the provision deals with the liability of a legal representative on account of death of the proprietor of the firm, it is sine qua non that the legal representative is issued a show cause notice and after seeking response from the legal representative, the determination should take place.*

9. *In view thereof, the determination made in the present case wherein the show cause notice was issued and the determination was made against the dead person without issuing notice to the legal representative, cannot be sustained."*

iii. *Anil Kumar Vrs. State of Punjab, CWP No.5041 of 2025 (O&M), decided on 21.02.2025* reported at *2025 (97) GSTL 185 (P&H)*:

"The petitioner is aggrieved by the impugned show cause notice dated December 19, 2023 (Form GST DRC-01), issued under Section 73 of CGST Act, 2017, by respondent No.2, in relation to the financial year 2018-2019, for certain discrepancies were noticed in the return filed by late Anil Kumar, resulting in the imposition of a liability of Rs.9,32,513/-. And also assails the final order dated April 22, 2024 (Form GST DRC-07), passed by respondent No.3, under Section 73(9) of PGST Act, 2017, whereby Rs.9,59,678/- are sought to be recovered from M/s Gauri Shankar Trading Company on account of an excess claim of Input Tax Credit (ITC).

*Learned counsel for the petitioner submits that **late Anil Kumar happened to be the sole proprietor of M/s Gauri Shankar Trading Company**, who unfortunately passed away on May 10, 2020. Therefore, she submits that the impugned show cause notice (P-5), having been issued against the deceased person, and all consequential proceedings, are null and void. Not just that, she submits that upon the demise of Anil Kumar, an application for the cancellation of the GST registration was moved by his heirs on September 28, 2020. And, vide order dated April 15, 2021, the authorities cancelled the registration with effect from June 30, 2020. It is submitted that despite the authorities being aware of the cancellation of the GST registration, recovery proceedings were initiated against a dead person. However, she fairly submits that although recovery against the LRs of the deceased (Anil Kumar) under Section 93(1)(b) of PGST Act, 2017, can be caused, but the petitioner, in the present case, were* *completely deprived of their right to participate in the impugned proceedings and set out their defence. Even otherwise, it is urged that the impugned demand is time-barred in terms of Section 73(10) of the Act, as an order under Section 73(9) can only be passed within 3 years from the due date for furnishing the annual return for the relevant financial years, which in this case is December 31, 2020.*

Notice of motion.

Served with an advance copy of the petition, Ms. Neha Sonawane, learned Deputy Advocate General, Punjab, is present in Court on behalf of the respondent(s). ***And, on instructions from Mr. Karanbir Singh Mansa, STO, she submits that in the given situation, the impugned show cause notice(s) and the consequential order dated April 22, 2024, being indefensible, it would be expedient if the matter is remitted to the competent authority to pass fresh orders in accordance with law.*** *Accordingly, she submits that the impugned show cause notice(s) and the consequential orders be deemed to have been withdrawn/re-called. That being so, learned counsel for the petitioner submits that let the petition be disposed of in terms of the statement made by learned Deputy Advocate General, Punjab.*

In the wake of the position sketched out above, as also the statements of learned counsel for the parties, the petition is accordingly disposed of. This Court is sanguine that the competent authority shall re-visit the matter in issue in the right earnest, and *pass a comprehensive order assigning reasons in support thereof.*

However, it is made clear that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated above, the competent authority shall examine the concerns/grievances of the petitioner, strictly in accordance with law"

iv. *Baratam Satish Vrs. Joint Commissioner of Central Tax, Writ Petition No.6029 of 2025, decided on 24.12.2025* reported at *2025 SCC OnLine AP 5209:*

> *"The petitioner is the son of Late B. Kameswara Rao, who was the registered person under the provisions of the Goods & Services Tax Act, 2017 [for short "the GST Act"]. He passed away on 21.12.2021. It is stated that the tax consultant was taking care of the affairs of B. Kameswara Rao, who had also expired on 04.03.2023. The petitioner further submits that the business of Late B. Kameswara Rao, under the name of M/s. Aravinda Enterprisers had been closed on 20.02.2023 and the same was also approved by the registering authority on 21.04.2023.*
>
> ***
>
> *5.* ***This provision [Section 93 of the GST Act] does not deal with the manner in which the assessment proceedings relating to a death person should be carried out. This provision only provides for the method of recovery of taxes and other dues payable***

by a death person. *Section 93(1)(A) of the GST Act provides for recovery of the taxes from the business of the death person if the same is being carried on by his legal representative or any other person. Section 93(1)(b) of the GST Act states that the dues of the death person can be recovered from the estate of the deceased if the business is discontinued. This provision essentially relates to recovery of tax and other amounts due against a death person. This provision does not deal with however assessment is to be carried out against a death person after he has passed away.*

6. It is settled law that the assessments and other proceedings can only be initiated against the persons who are living and such proceedings against death person would not be valid. ***However, the fact remains that, under Section 93 of the GST Act, the dues of the death person can be recovered either from the business he had set up or from his estate.*** *In such circumstances, in the absences of any provision, this Court would have to be hold that the only practicable way of settling the affairs of the death person would be to direct the assessment being carried out by involving either the representative or person carrying on the business of a death person or which such business is not being carried on, by involving the legal representative who be holding the estate of the deceased person.*

> *7. In the said circumstances, since the petitioner is the legal representative of the deceased person, being his son, it would be appropriate to set aside the impugned order, dated 25.01.2024, with a direction to carry out a fresh assessment after involving the petitioner herein, by issuing a notice to the petitioner. Needless to say, any recovery that may be initiated, after an Order of assessment, shall be only against the estate of a deceased person and against the petitioner to the extent of the estate of his deceased father, which is available to the petitioner."*

7.9. There is no dispute that Manoranjan Mohapatra, proprietor of M/s. J.S. Enterprisers expired on 24.11.2022 and such fact was made known to the GST Organisation even prior to issue of Summary Show Cause Notice in Form GST DRC-01, dated 26.09.2025 and Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and Order-in-Original dated 29.12.2025 (Annexure-2) was passed despite being conscious of the fact that such order is being made against a dead person. In view of provisions of Section 93 of the GST Act and bearing in mind the afore-noted decisions, the action of the Assistant Commissioner of GST and Central Excise, Cuttack-I Division, Cuttack cannot be defended and the notice and the order against a dead person cannot be sustained as they are rendered *non est* in the eye of law. The Show Cause Notice as well as the

Order-in-Original, being inexplicable, is liable to be set aside.

8. *Ergo*, since Order-in-Original (Annexure-2) has been passed in pursuance of the Show Cause Notice (Annexure-1) under Section 73 of the GST Act against a dead person without issuing notice to the legal representative(s), the same cannot be sustained and they are hereby quashed.

8.1. At paragraph 10 of the writ petition, it is asserted by the petitioner as follows:

> *"That as the legal heirs of late Manoranjan Mohapatra have decided to continue the proprietorship concern in the name of Jyotiranjan Mohapatra as a legal heir and accordingly Sri Jyotiranjan Mohapatra applied for amendment of non-core fields in registration particular in Form GST REG-14 which was approved on 20.06.2023."*

8.2. As it is admitted fact by the petitioner, one of the legal heirs/representatives, that he has been continuing with the business of the deceased proprietor, namely Manoranjan Mohapatra, by using same GSTIN, *i.e.,* 21AGEPM8738K1Z5, which was assigned to M/s. J.S. Enterprisers, in view of Section 93 of the GST Act, the GST Organisation has the remedy available to it by initiating appropriate proceeding against the petitioner-proprietor.

9. In the wake of the above, the Summary of Show Cause Notice in Form GST DRC-01, dated 26.09.2025 accompanied by Demand-*cum*-Show Cause Notice dated 25.09.2025 (Annexure-1) and the Order dated 29.12.2025 along with Order-in-Original dated 29.12.2025 (Annexure-2) raising a demand under Section 73 in terms of the Central Goods and Services Tax Act, 2017 and the Odisha Goods and Services Tax Act, 2017 read with Section 20 of the Integrated Goods and Services Tax Act, 2017, pertaining to Financial Year 2021-22 (covering tax periods from 01.04.2021 to 31.03.2022) being quashed, the Assistant Commissioner, GST & Central Excise, Cuttack-I Division, Cuttack/Proper Officer, is at liberty to take appropriate proceeding by issue of notice to the petitioner representing the interest of other legal heirs/legal representatives of the deceased-Manoranjan Mohapatra and proceed in accordance with law.

9.1. It is clarified that the facts discussed herein above are referred to and relied on as were available on record for the purpose of adjudication of the issue raised in the writ petition. Such facts are not to be construed as expression of opinion of this Court touching the merit of the determination of liability of the "proprietor" of M/s. J.S. Enterprisers.

9.2. In the event the Proper Officer/Competent Authority issues notice for the purpose of adjudication of liability with respect to transactions of M/s. J.S. Enterprisers relating to Financial Year 2021-22, if so advised, it is open for the petitioner to take all such grounds and/or raise issues before the Adjudicating Authority, who shall be obligated to deal with all such aspects and pass appropriate reasoned order.

10. With the aforesaid observation, the writ petition is disposed of and pending Interlocutory Application(s), if any, shall be deemed to have been disposed of.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

High Court of Orissa, Cuttack
The 22nd July, 2026//Aswini/Laxmikant